

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:14-CR-117 JCM (GWF)

Plaintiff(s),

ORDER

V.

OSCAR OTIEL OCHOA-SANCHEZ,

Defendant(s).

Presently before the court is *pro se* defendant Christian Ortiz's motion for a sentence reduction under amendment 782 of 18 U.S.C. § 3582(c). (ECF No. 128).

On December 4, 2015, defendant filed his *pro se* motion for a sentence reduction. (ECF No. 128). On January 15, 2016, pursuant to the District of Nevada's protocol for discretionary sentence reductions, the court entered an order appointing the federal public defender as counsel to represent the defendant. (ECF No. 129).

In its order, the court directed probation to prepare a supplemental presentence report addressing whether, in the probation office's assessment, the defendant is statutorily eligible for a sentence reduction under Amendment 782. (ECF No. 129). The court further ordered the federal public defender to file any appropriate motion or stipulation within 120 days. (ECF No. 129).

On May 13, 2016, the federal public defender filed its motion to withdraw as attorney in this case. (ECF No. 131). Counsel stated that it reviewed the defendant's file, including all relevant court documents. (ECF No. 131). Based on this review, counsel represented that it would not file any motion for a sentence reduction on the defendant's behalf. (ECF No. 131). Accordingly, the federal public defender sought to withdraw as counsel. (ECF No. 131). On May

1 16, 2016, the court granted the federal public defender's motion to withdraw as counsel. (ECF
 2 No. 132).

3 The District of Nevada's protocol for discretionary sentence reductions provides that if
 4 defense counsel files a motion to withdraw, the court will review probation's supplemental PSR
 5 and determine whether a response from the United States attorney's office ("USAO") to
 6 defendant's *pro se* motion is necessary, or whether it can rule on the motion without requiring a
 7 government response. If the court determines that a response from the USAO is warranted, it shall
 8 order one.

9 In the present case, the court finds that a response from the USAO is unnecessary to rule
 10 on the motion. Probation has provided the court with a reduction of sentence report for this
 11 defendant. Probation recommends that the court find defendant ineligible for a sentence reduction
 12 pursuant to 18 U.S.C. § 3582(c)(2), Amendment 782, and U.S.S.G. § 1B1.10.

13 Probation notes that at defendant's sentencing hearing, his offense level calculations were
 14 computed based on the November 1, 2014, guideline manual, which already incorporated the
 15 amended base offense level ranges. Probation further states that defendant received a sentence of
 16 the minimum term allowed by the statute of conviction.

17 Pursuant to 18 U.S.C. § 3582, the court may reduce a term of imprisonment where a
 18 defendant has been sentenced based on a sentencing range subsequently lowered by the United
 19 States Sentencing Commission after considering the factors set forth in 18 U.S.C. § 3553(a). 18
 20 U.S.C. § 3582(c)(2). Reductions in a term of imprisonment based on an amended guideline range
 21 are governed by the policy statement set forth at U.S.S.G. § 1B1.10.

22 Pursuant to U.S.S.G. § 1B1.10(b)(2), the court generally may not reduce a defendant's term
 23 of imprisonment to a period less than the amended guideline range. U.S.S.G. § 1B1.10(b)(2)(A).
 24 The sole exception to this rule involves cases in which the defendant originally received a below-
 25 guideline sentence pursuant to a government motion for substantial assistance. U.S.S.G. §
 26 1B1.10(b)(2)(B).

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Based on the foregoing, the court finds that the defendant is not entitled to a discretionary sentence reduction in this case. Defendant's existing sentence reflects the statutory mandatory minimum for his offense. Therefore, defendant's motion will be denied.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that *pro se* defendant Christian Ortiz's motion for a sentence reduction (ECF No. 128) be, and the same hereby is, DENIED.

DATED September 28, 2016.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE